between railroads of thousands of freight cars, we suggest this Court should review the case by certiorari, and finally determine the questions presented. If this Court grants a review, there is a further question which merits consideration: the sufficiency of the evidence to establish actionable negligence against Rock Island, for the record shows only the facts already recited, and is wholly silent as to whether any defect in the brake was present when the car was set out on the transfer track, or could have been discovered by any normal inspection of its mechanism.

We believe that the two courts below have not given proper effect to the Federal statutes which are of controlling importance, and have decided the case as involving only rules of state law. In addition, they have so far departed from the usual course of recognized rules of law as to require the exercise of the supervisory power of this Court.

THE STATUTES INVOLVED.

No Iowa statutes have application to the controversy. The Federal Employers' Liability Act provides:

> "Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories or between the District of Columbia and any of the States or Territories and any foreign nation or nations shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of

officers, agents or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment.

"Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter. Apr. 22, 1908, c. 149, § 1, 35 Stat. 65; Aug. 11, 1939, c. 685, § 1, 53 Stat. 1404." U. S. C. A., Title 45, § 51.

"Every common carrier by railroad in the Territories, the District of Columbia, the Panama Canal Zone, or other possessions of the United States shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment. Apr. 22, 1908, c. 149, § 2, 35 Stat. 65." U. S. C. A., Title 45, § 52.

"In all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this chapter to recover damages

for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: **Provided** That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee. Apr. 22, 1908, c. 149, § 3, 35 Stat. 66; U. S. C. A., Title 45, § 53.

The United States Safety Appliance Act is as follows:

"It shall be unlawful for any common carrier subject to the provisions of sections 11-16 of this title to haul, or permit to be hauled or used on its line, any car subject to the provisions of said sections not equipped with appliances provided for in said sections, to wit: All cars must be equipped with secure steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure handholds or grab irons on their roofs at the tops of such ladders: **Provided**, That in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus coupled for such purpose. Apr. 14, 1910, c. 160, § 2, 36 Stat. 298; U. S. C. A., Title 45, Sec. 11.

STATEMENT OF THE CASE

The two railroads own branch lines extending through the small town of Goldfield, Iowa, which intersect at approximately right angles, with a curved transfer or interchange track, 250 feet in length, connecting the two lines. Shortly before 1 A. M. on February 5, 1955, a Rock Island train crew set out five boxcars on this track, for transfer to Northwestern, including car Rock Island 262261, loaded with agricultural implements, billed from East Moline, Ill., on the Rock Island, to Brookings, So. Dak., a Northwestern point. A Rock Island brakeman set the handbrake on this car, using the handbrake lever in the normal manner. He experienced no difficulty in operating the brake.

About noon a northbound Northwestern freight train, on which Bert L. Kleppe was a brakeman, arrived in Goldfield. The conductor of this train had been advised that cars were to be picked up at Goldfield from the Rock Island. Pursuant to the conductor's directions the Northwestern locomotive moved on to the interchange track and coupled to the cars to pull them from the interchange track and to put them into the Northwestern train. Kleppe mounted the westerly end of car 262261 to release the handbrake. After the engine had moved the cars some 30 to 100 feet, the brake handle came off, and Kleppe fell to the frozen ground receiving serious injuries. Northwestern effected settlement with Kleppe before suit for seventy-thousand dollars, the reasonableness of which was contested by Rock Island.

Northwestern's complaint charged that Northwestern was only secondarily liable to Kleppe, but Rock Island was guilty of primary negligence (a) in handling or using on its line a car not equipped with efficient handbrakes,

and in tendering such car to Northwestern in violation of the Safety Appliance Act; (b) in failing to adequately inspect the car and its handbrake; and (c) in failing to repair the defective handbrake. It prayed for judgment indemnifying it in the amount of seventy thousand dollars. The second division of the complaint repeated all allegations of the first, and alleged both parties were negligent. It prayed for contribution in the amount of thirty-five thousand dollars.

Rock Island denied negligence; pleaded that Northwestern accepted the car and thereby assumed responsibility to Kleppe for its condition; pleaded the Codes of Car Service and Interchange Rules between railroads as waivers of any right of indemnity or contribution; it set up that Northwestern's liability to Kleppe arose under the Federal Employer's Liability and Safety Appliance Acts, not applicable to Rock Island, and the parties were, therefore, under no common liability to Kleppe; that Kleppe by his own negligence contributed to his injury.

Upon the trial before the District Court without a jury the facts with respect to ownership of the car, the setting of the handbrake by a Rock Island employee, and the manner of Kleppe's injury were stipulated, as well as that both railroads were parties to the Codes of Car Service and Interchange Rules. Rule 7 of the Car Service Code is as follows:

> "Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by necessary data for forwarding and to insure delivery, and accepted by the car inspector of the receiving road.
>
> "Unless otherwise arranged between the roads concerned the receiving road shall be responsible for the cars, contents and per diem after receipt of the cars

for forwarding and to insure delivery and until they have been accepted by its inspector or returned to the delivering road."

Neither railroad maintained a car inspector at Goldfield, Iowa.

The Code of Interchange Rules provides:

"These rules are formulated as a guide to the fair and proper adjustment of all questions arising between car owner and handling company with the intent of:

"1. Making car owners responsible for and, therefore, chargeable with the repairs to their cars necessitated by ordinary wear and tear in fair service; by the Safety Requirements and by the Standards of the Association of American Railroads.

"2. Placing responsibility with and providing a means of settlement for damage to any car, occurring through unfair usage or improper protection by the handling company.

"3. Providing an equitable basis for charging such repairs and damages.

"Care of Foreign Freight Cars.

"Rule 1. (a) Each railroad is responsible for the condition of all cars on its line, and must give to all equal care as to inspection and lubrication."

Petitioner's evidence established for many years it had been the universal custom and practice among railroads to make no claims for indemnity or contribution against each other for personal injuries to employees under the circumstances here shown. This evidence was in no manner controverted by respondent.

John F. Stewart, retired General Manager, Milwaukee Railroad, who had worked for 47 years in various capacities for that line, testified that his railroad had had

no such claims presented to it, and had made no such claims against other railroads. He said:

> "When we made delivery of cars on a designated interchange track accompanied by or preceded by proper billing or bill of lading, the interchange had been completed. We did not figure we were responsible for what occurred after we had followed the usual custom or practice of making interchange as prescribed by the rules" (R. 50).

E. E. Foulks, assistant vice president of petitioner, who had served in various capacities as an officer of the Santa Fe Railroad for many years, said:

> "I never heard of a case of one railroad [illegible] another or attempting to collect, where there had been personal injuries sustained by employees of the receiving line of railroad in connection with cars interchanged from a connecting line. . . .
>
> "When a car is delivered, certain requirements are made by your interchange rules to place it on the designated interchange track, accompanied by, or preceded by, the necessary documents for movement of the car. The receiving railroad accepts the car, and at the time of their acceptance, in my opinion, they become responsible for all hazards connected with it. I can recall an instance of a car found on the track hours after it was interchanged from one railroad to another. The railroad which had accepted the car was responsible for the damage, because the car had been interchanged. . . .
>
> "Q. Have you, in your experience, ever known a receiving railroad, after a car is in its physical custody and possession, billing against, or making claim against the delivering line of railroad because of a personal injury sustained by an employee of the receiving line?
>
> "A. The answer is no" (R. 55-56).

John J. Clifford, general claim agent for Rock Island Lines, testified:

"In my experience covering the last approximately 30 years the Kleppe case is the first demand ever made on the Rock Island, to my knowledge, for reimbursement, or contribution, in connection with a railroad receiving a car in interchange, and making claim against the delivering line after it has taken physical possession of the car and the car is in the custody of the receiving line, with respect to any personal injuries sustained by an employee of the receiving line. I have never had the experience of having any claim made against the Rock Island by any other line or railroad under these circumstances except in the Kleppe case.

"The Rock Island Railroad, to my knowledge, under circumstances where it is the receiving line of railroad has not made claim against any other railroad for reimbursement, indemnity or contribution where Rock Island employees may have sustained a personal injury under similar circumstances." (R. 59)

George J. Mulick, Rock Island general manager of lines in Illinois, Iowa, Kansas, Nebraska, Colorado, Minnesota, South Dakota and part of Missouri, who had also worked for 24 years for Union Pacific Railroad as yardmaster, trainmaster, assistant superintendent, superintendent, general superintendent and assistant to the general manager, testified:

"Q. Now what is the custom and practice between the railroads, as you have observed it, with respect to making claims against each other where a car is found to have a defect after it is in the physical possession of the receiving line where there has been a delivery . . .

"A. I know of no cases where claim was made on account of personal injuries involved on such detector cars." (R. 45-56).

Similar evidence was given by W. R. Hovious, General Claim Agent for the Illinois Central Railroad, who had served in various capacities in the Claim Department of that railroad for many years.

BASIS OF DISTRICT COURT JURISDICTION.

Respondent's complaint was predicated upon diversity of citizenship. Petitioner is a Delaware corporation, and respondent a corporation of the state of Wisconsin.

ARGUMENT.

Question 1.

As we have seen, the trial court found as a fact that delivery of the car from which Kleppe fell had been completed, and Northwestern had accepted the car. The Court of Appeals accepted this finding.

For nearly 100 years the major railroads of this country and Canada have been governed, with respect to various phases of their operations, by codes of rules, two of which are relied upon. During this time the official reports and digests of decided cases disclose no litigation between railroads involving the right of a receiving line to demand indemnity or contribution from a delivering line in case of injury to its employees. The effect of these rules upon rights of indemnity or contribution has never been presented to, or decided by, any court of last resort, either state or federal.

Originally a majority of the states followed the rule of the English common law, which barred contribution between joint tort feasors. Notable exceptions were Connecticut, Massachusetts and Pennsylvania, which held that in cases of negligence of two or more inuring a third party, there is an equitable right of contribution between those equally liable. Since 1887 Minnesota has recognized a right of contribution between negligent but non intentional joint tort feasors. See **Ankeny v. Moffett**, [illegible] N. W. [illegible]. Wisconsin for more than fifty years has applied the same rule.

Some twenty five years ago attention was directed to contribution between joint tort feasors by the National Conference of Commissioners on Uniform State Laws, and a uniform act for adoption by state legislatures was recommended. By 1950, the states of Arkansas, Delaware, Hawaii, Maryland, New Mexico, Pennsylvania, Rhode Is-

land, and North and South Dakota adopted the "Uniform Contribution Among Tort-Feasors Act". A number of states have provided for contribution between tort feasors by statute, but with variations from the Uniform Act. In other jurisdictions the change has been made through decisions of the state courts. The opinion of the Court of Appeals points out that contribution among joint tort feasors is now in effect, in various degrees, by statute or otherwise, in about one-half of the states.

The rule is based upon the equitable principle that one who pays more than his fair share of a "common liability" is entitled to reimbursement from others, equally responsible with him. The rule has never been applied in cases in which to do so would produce an inequitable result, and it is universally held that the parties must be under a "common liability" to the injured person.

Iowa, which for many years followed the English common law rule, in 1956, by decision of its Supreme Court in **Best v. Yerkes**, 247 Iowa 800, 77 N. W. (2d) 23, established an equitable right of contribution between tort feasors. The Iowa Supreme Court there said:

> "The right to indemnity or contribution presupposes actionable negligence of both parties toward a third party. * * * So here, Yerkes can have no indemnity or contribution unless both he and Cross were guilty of actionable negligence toward Best."

This holding of the Iowa Supreme Court has been adhered to in **Van Tiger v. Hendricks**, 249 Iowa 25, 85 N. W. (2d) 543, in **Constantine v. Scheidel**, 249 Iowa 953, 90 N. W. (2d) 10, and in **Hawkeye-Security Ins. Co. v. Lowe Construction Co.**, 99 N. W. (2d) 421. The large number of states which permit contribution between tort feasors makes the questions presented by this record of major importance to all railroads throughout the United States because of the very large amounts of money involved in injury cases of railroad employees in recent years.

A reading of Rule 7 of the Car Service Rules shows that it was intended to define when delivery of a car between connecting lines had been completed. It then goes on to say:

> "The receiving road shall be responsible for the cars, contents and per diem after receipt of the data for forwarding and to insure delivery, and until they have been accepted by its inspector or returned to the delivering road."

Interchange Rule 1 says that each railroad "is responsible for the condition of all cars on its line, and must give to all equal care as to inspection and lubrication."

What meaning is to be attributed to the word "responsible" found in these rules? Webster's International Dictionary, second edition, gives a number of meanings to the word as follows:

> "Liable to respond; likely to be called upon to answer; accountable; answerable; amenable; as a guardian is responsible to the court for his conduct in the office;
>
> "Able to respond or answer for one's conduct in obligations; trustworthy, financially or otherwise;
>
> "Answerable as the primary cause, motive or agent, whether of evil or good; creditable or chargeable with the result."

Synonyms are listed as:

> "Answerable, accountable, liable."

The courts have frequently said that the word "responsible" is a legal synonym for "liable." Thus in the early case of **McElfresh v. Kirkendall**, 36 Iowa 224, in construing a statute which provided that neither husband nor wife should be liable for the separate debts of the other the Iowa Supreme Court said:

> "Liability is responsibility; the state of one who is bound in law and justice to do something which may

be enforced by action. This liability may arise from contracts, either express or implied, or in consequence of torts committed."

The Court of Appeals for the Seventh Circuit in **Niagara Fire Extinguisher Co. v. Hibbard**, 179 F. 844, in determining whether a party had consented to an assignment of a particular contract where he had insisted that the assignee have "the same responsibility that the old company gives to me" said:

> "The primary meaning of responsibility is the state of being answerable for an obligation."

The case of **Beale v. Joseph Magnin Co.**, from the California Court of Appeal, First District, reported in 294 P. (2d), page 43, is directly in point. There Magnin and Emanuel entered into a written contract by which Emanuel agreed to make certain alterations on a store building owned by Magnin, during the course of which Mildred Beale sustained injuries from a temporary door installed by Emanuel. Mrs. Beale's claim was compromised, and Magnin's insurance carrier sought indemnity from Emanuel. The contract, among other things, provided:

> "The owner shall be responsible for and at his option may maintain such insurance as may protect him from his contingent liability for damages for personal injuries, including death, which may arise from operations under this contract."

In affirming a judgment that Magnin by this contract had assumed liability to third persons and was not entitled to indemnity, the California Appellate Court said:

> "We agree with the trial court that this provision amounts to an assumption of personal responsibility for such liability and is inconsistent with the existence of whatever right of indemnification might otherwise exist."

The courts below ignored the fact that the injury to Kleppe occurred immediately after completion of the [illegible]

terchange of cars a subject specifically covered by the rules.

Under these authorities we submit that the Car Service and Interchange Rules were contracts, which govern the legal rights of the parties, not only with respect to car repairs and per diem charges, but also for liability for injury to third persons.

If there be any ambiguity in the Rules, it is completely dispelled by the conduct of the railroad companies themselves over a long period of years. Witnesses employed by other railroads, and by the Rock Island, testified that no claims of the character here involved had ever been asserted between railroads. This evidence, although uncontroverted by respondent, was given no consideration by the courts below.

One of the most fundamental rules in the law of contracts is that the construction of an ambiguous contract, placed upon it by parties before a controversy arises, is entitled to great, if not controlling, weight in determining its true meaning. This rule is well illustrated by the statement of the text writer in 12 Am. Jur., Sec. 249, page 787, who says:

> "In the determination of the meaning of an indefinite or ambiguous contract, the interpretation placed upon the contract by the parties themselves is to be considered by the court and is entitled to great, if not controlling, influence in ascertaining their understanding of its terms. In fact, the courts will generally follow such practical interpretation of a doubtful contract. It is to be assumed that parties to a contract know best what was meant by its terms and are the least likely to be mistaken as to its intention; that each party is alert to protect his own interests and to insist on his rights; and that whatever is done by the parties during the period of the performance of the contract is done under its terms as they under-

stood and intended it should be. Parties are [illegible] likely to have been mistaken as to the meaning of their contract during the period when they were in harmony and practical interpretation reflects its meaning than when subsequent differences have impelled them to resort to law and one of them seeks an interpretation at variance with their practical interpretation of its provisions. * * *"

This statement of the rule is predicated upon repeated pronouncements of this court, among which are **City of Chicago v. Sheldon,** 9 Wall. 50, 19 L. Ed. 594; **Steinbach v. Stewart,** 11 Wall. 566, 20 L. Ed. 56, and **Old Colony Trust Co. v. Omaha,** 230 U. S. 100, 57 L. Ed. 1410, and by pronouncements of courts of last resort throughout the United States.

Contribution between negligent joint tort-feasors in some jurisdictions has been permissible for more than eighty years, and in a great many for more than fifty years. Certainly in such period there must have occurred injuries to employees of lines of railroad receiving cars from others, resulting from the condition of cars for which the receiving lines have been held responsible. Yet in the long history of railroad litigation we find no case in the books in which a receiving line has sued a delivering line for indemnity or contribution after settling an injury claim of one of its own employees. In view of the large sums paid to railroad employees in settlement of injury claims under F. E. L. A., and particularly injuries connected with Safety Appliance defects, the failure of railroads to assert rights against each other cannot fairly be said to involve only "protocol". Railroad corporations are at least as "cost conscious" as are other concerns engaged in business for profit. While it is true that Iowa has recognized a right of contribution between negligent tort-feasors only since 1956, other jurisdictions have recognized such right for many years. That no claims of the

character here involved have been asserted before the courts is persuasive evidence that the railroads accepted the construction of the rules placing liability for injury to employees only upon the line hauling or using the car.

The construction placed upon the Car Service and Interchange Rules by the courts below will obviously result in a flood of litigation between railroad companies. This will follow, as the delivering line in one case will be the receiving line in another. As a delivering line it will be subject to suit for contribution for the condition of cars after delivery to a connecting line. As a receiving line it will necessarily seek to recoup its losses from lines which deliver cars to it.

Thus a veritable Pandora's Box of litigation will be opened. Counsel are aware of several cases which have been brought on the strength of the trial court's ruling in the case at bar. This new found rule, allowing a receiving railroad to recover contribution from a delivering line, will in no manner benefit any railroad employees who may be injured. At present injured employees are fully protected, and need look only to their immediate employers for satisfaction of claims for injury resulting from defective safety appliances.

In view of the novel character of the demands made and the construction of the rules followed by the railroads themselves from time immemorial, we earnestly urge that this case presents an important question of law which this Court should review and which has been erroneously determined by the courts below.

Question 2.

This Court has consistently and repeatedly ruled that the Safety Appliance Act imposes an absolute liability on the railroad hauling a defective car on its line for personal injury to its employee. This liability is in no way dependent upon the existence of common law negligence or

the lack of it. No degree of care, no matter how ... constitutes a defense once a violation of the Act is ... This liability was imposed by Congress only upon the particular railroad using or hauling the defective car on its line, not upon one which may in the past have had possession of the car.

The cases so holding are numerous and include **San Antonio & Aransas Pass. Ry. Co. v. Wagner**, 241 U. S. 476, 36 S. Ct. 626, 60 L. Ed. 1110; **Carter v. Atlanta & St. A. B. Ry. Co.**, 338 U. S. 430, 70 S. Ct. 226, 94 L. Ed. 250; and **O'Donnell v. E. J. & E. Ry. Co.**, 338 U. S. 384, 70 S. Ct. 200, 94 L. Ed. 187.

The two courts below treated this case as involving only questions of contribution or indemnity arising under state laws, and completely ignored the nature of the liability created by the Safety Appliance Act. The trial court ruled that a "common liability" to Kleppe might be found in a common law obligation upon both parties to adequately inspect the brakes of the car. The Court of Appeals said this finding of the trial court was "not clearly erroneous." It predicated its affirmance upon the fact that Safety Appliance Act liability for personal injury could only be enforced through suit under the F. E. L. A., which by its terms imposes liability for negligence. In these respects we contend that the courts below were in error.

First. Both courts below overlooked or disregarded that Northwestern's liability for negligence was completely superseded by the express provisions of the Safety Appliance Act. Any liability of Northwestern to Kleppe under F. E. L. A. for common law negligence was supplanted by the statute which imposes an absolute liability. In **New York Central R. R. Co. v. James Winfield**, 244 U. S. 147, 61 L. Ed. 1045, and in **Erie R. R. Co. v. Amy Winfield**, 244 U. S. 170, 61 L. Ed. 1057, this court held that the Federal Employer's Liability Act fully occupied the field of liability of a railroad employer to its employees

for personal injury, or death, and state law were the only theories. It seems clear, therefore, that the trial court was in error in holding that common law negligence on the part of Northwestern might be resorted to as a basis of common liability between the parties.

It seems to us equally plain that the statutory liability imposed by the Safety Appliance Act completely supersedes any claim which Kleppe might have asserted against Northwestern for negligence under F. E. L. A. While it is true that the Safety Appliance Act can only be enforced by suit under F. E. L. A., still there is no actual common liability for actionable negligence, apart from the Safety Appliance violation of Northwestern. It follows, therefore, that both courts below erroneously found the existence of a common liability to Kleppe.

Second: It is very plain that the two railroads were not on a basis of equality in relation to Kleppe's injury. Northwestern's liability was absolute; Rock Island's liability was dependent upon a showing of actionable negligence, plus freedom from contributory negligence under Iowa law. (Since the issue of contributory negligence was decided adversely to petitioner by the trial court upon supporting evidence, we concede that contributory negligence is not now in the case.) The courts universally recognize that contribution is an equitable remedy and will not be granted when to do so would produce inequitable results. This rule was stated by the Minnesota Supreme Court in the recent case of **American Auto Ins. Co. v. Molling**, 37 N. W. (2d) 847, as follows:

> "* * * The principle of equity on which the right of contribution is founded can apply only in cases where the situations of the parties are equal, for equality among persons whose situations are not equal is not equitable. (Citing cases.) Within the meaning of this rule, the situations of the parties are equal when the parties are under a common burden or liability."

mere finding of fact. We think the preceding portions of this petition demonstrate that this case involves much more than a mere finding of fact. If certiorari is granted, the sufficiency of the evidence to sustain the finding of the trial court and the affirmance of the judgment by the Court of Appeals should also be reviewed.

CONCLUSION.

It is manifest that the questions presented are of far reaching importance to the railroad industry. It is certain that if the judgment below be sustained, much litigation, which has never heretofore reached the courts, will result. The decisions below are not supported by precedent. The rule announced will result in no practical benefit to injured employees of railroads, but will vastly increase litigation in the personal injury field between railroads.

This is a case of first impression and presents new questions not heretofore passed upon by any court. In our view, the decisions below were clearly erroneous. While we have no actual conflict of decisions as yet between the Court of Appeals for the Eighth Circuit, and any other Court of Appeals, it seems inevitable that other Courts of Appeal will not accept the reasoning upon which the judgment below was predicated, or the logic of the Court of Appeals for the Eighth Circuit in sustaining it. We urge, therefore, that a situation is presented in which this Court should now grant certiorari to finally determine the questions presented.

Respectfully submitted,

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